

1 Longstreth

2 Q. It is nice, believe me. Where would I  
3 be?

4 A. I've almost forgotten the feeling.

5 Q. Where would I be without them?

6 A. It's hard to get those light bulbs  
7 screwed in by myself.

8 Q. Now, your report indicates that the  
9 charge -- your expert fee in this case is \$1,000  
10 per hour; is that correct?

11 A. Correct.

12 Q. Have you ever charged that rate in any  
13 other matters, like these matters that you've  
14 testified to?

15 A. I think I charged that rate in the CFS  
16 matter, but not before.

17 Q. Do you know what your total charges --  
18 well, let me start it this way.

19 Have you submitted an invoice, a bill,  
20 to anybody in connection with your work?

21 A. Yes, I've submitted more or less monthly  
22 bills.

23 Q. And who did you submit those to?

24 A. The Friedman Firm.

25 Q. Do you know what the total of those

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2 invoices has been, in order of magnitude?

3 A. I don't know what the total has been. I  
4 don't want to speculate on it because I would -- I  
5 would get it wrong.

6 Q. Well, let's try and --

7 A. I mean, I could get it badly wrong.

8 Q. Let's try and see if we can come up at  
9 least with a ballpark.

10 A. Okay.

11 Q. Through -- when's the last time you  
12 submitted an invoice, as far as you can recall?

13 A. After I submitted the expert report. I  
14 don't think I've submitted anything since then,  
15 even though some months has passed, because I  
16 didn't do anything on the case.

17 Q. Somewhere between January 12th and  
18 today --

19 A. Probably the end of January, for a  
20 period through January 31st.

21 Q. And through January 31, 2006, would your  
22 total charges have exceeded \$10,000?

23 A. Yes.

24 Q. Would your total charges have exceeded  
25 \$50,000?

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2 A. Probably no. Although, I mean, it would  
3 be -- you know, it's somewhere in that area,  
4 probably.

5 Q. Your best estimate --

6 A. Best estimate.

7 Q. -- is somewhere between 10- and \$50,000?

8 A. No, I think it's closer to 50 than 10.  
9 I mean, 10 is 10 hours. I've spent more time than  
10 that.

11 Q. Closer to --

12 MR. CLARK: Off the record for a second.

13 THE VIDEOGRAPHER: The time is 11:03

14 a.m. and we are going off the record.

15 (Discussion off the record.)

16 THE VIDEOGRAPHER: The time now is 11:12

17 a.m. We are back on the record.

18 Q. Subsequent to your last invoice, do you  
19 know, again, not to the minute, but generally, do  
20 you know how much time you have put into the case?

21 A. Maybe six hours, something like that.

22 Q. Which has not been billed?

23 A. Not been billed.

24 Q. Have you been paid for the invoices that  
25 you've submitted?

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2 A. Yes.

3 Q. The full amount?

4 A. Yes.

5 Q. By whom?

6 A. By the Friedman Firm.

7 Q. And when were you paid? Were you paid,  
8 you know --

9 A. Promptly after I submitted the bill.

10 Q. So you're owed nothing; there's no  
11 outstanding amounts?

12 A. That's correct.

13 Q. Is payment of any portion of your fees  
14 or charges contingent on the outcome of this  
15 litigation?

16 A. No.

17 Q. You've got to let me finish.

18 A. Oh, I'm sorry.

19 Q. Even though you knew where I was going  
20 with that one. I thought it was a subtle question.

21 A. A very subtle question.

22 Q. Prior to agreeing to this engagement,  
23 did you inquire into the financial status of the  
24 plaintiffs?

25 A. No.

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2 Q. Was it your agreement from the outset  
3 that the Friedman Firm would be responsible for  
4 paying your fees and you would look only to the  
5 Friedman firm for the payment of those fees and  
6 expenses?

7 A. I really didn't investigate it. I --

8 Q. No, I was asking, what was your  
9 understanding for who was going to pay you and who  
10 was responsible to pay you.

11 A. Well, it's been my custom not to  
12 investigate this very closely, and I didn't feel a  
13 need to in the case of the Friedman Firm.

14 Q. But it's a different question,  
15 Mr. Longstreth. I'm just asking, from the outset,  
16 was it your agreement and understanding that you  
17 would be paid by the Friedman Firm and the Friedman  
18 Firm would be responsible for paying, as opposed to  
19 the plaintiffs or anybody else?

20 A. That's what I thought, although I also  
21 thought they would be paid by the plaintiffs, their  
22 clients.

23 Q. They -- the Friedman Firm would?

24 A. Yes.

25 Q. Now, turning to your report. As I

1 Longstreth

2 understand it, and I'm looking at the second page,  
3 page 2 of the report itself.

4 A. Right. Okay.

5 Q. You were engaged to opine -- there are a  
6 number of questions, but basically you were opining  
7 on one issue, and that is the nature of the  
8 arms-length bargaining that would have occurred  
9 between Mr. Perelman or his affiliates and the  
10 Marvel board had he asked the Marvel board to  
11 assist or acquiesce in the Holding Company note  
12 transactions in '93 and early '94; is that correct?

13 A. Yes.

14 Q. And then in connection with that  
15 overarching issue, you were asked your expert  
16 opinion on, I think, eight specific subquestions,  
17 if you will; is that correct?

18 A. That's correct. Seven or eight, yeah.

19 Q. So, is it fair to say that the scope of  
20 your expert -- these Holding Company note  
21 transactions as to which you were going to give an  
22 opinion on the nature of arm's-length bargaining,  
23 the last of those occurred in February of 1994; is  
24 that your recollection?

25 A. That's the Marvel III?

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2 Q. Marvel III.

3 A. Yes.

4 Q. So the temporal scope of your expert  
5 opinion would be limited to the time up to the  
6 issuance of those Marvel III notes in February of  
7 1994; is that correct?

8 A. Yes, but -- yes. That was the focus of  
9 the opinion.

10 Q. Well, you make a number of statements in  
11 your report concerning events after February 1994  
12 that would appear to be beyond the scope of your  
13 precise assignment; is that correct?

14 A. Well, they are observations. Let's  
15 take, for example, the shelf registration of Marvel  
16 in which Marvel warns readers about the impact of  
17 these negative covenants. I mean, that -- that's  
18 central to my opinion.

19 Q. We'll get to that, but my point --

20 A. I mean, that's outside the period --

21 Q. The temporal scope of where you were  
22 being asked to give an opinion. Let me approach it  
23 this way.

24 It would be fair, wouldn't it, to say  
25 that none of the facts or circumstances that you

1 Longstreth

2 talk about in your report that occurred after  
3 February of 1994 could have been considered in any  
4 way, shape or form by the independent directors of  
5 Marvel in connection with any of these note  
6 transactions, had they been asked to consider those  
7 transactions?

8 A. What actually happened is unknown, if  
9 that's what you're saying.

10 Q. Right.

11 A. I mean, what's going to happen in the  
12 future is unknowable. On the other hand, a  
13 director has a duty to foresee possibilities.  
14 That's their job. So, there's a question of what  
15 was recently foreseeable.

16 Q. But in assessing --

17 A. In contrast to what actually happened.

18 Q. In assessing the reasonableness of what  
19 a director did or didn't do at a particular point  
20 in time, it would not be fair to charge him with  
21 knowledge of facts that had not yet occurred; is  
22 that correct?

23 A. That's correct.

24 On the other hand, it's -- it's -- let  
25 me point out, it's also, I observed that before the



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2 first note issuance, the company, Marvel, amended  
3 its charter to double its capacity in both the  
4 preferred stock and common stock. And that, too,  
5 is central, even though it's not in the temporal  
6 period you're talking about.

7 Q. Now, going to page 1 of your report --  
8 what I -- just so you understand, what I've done to  
9 help myself out is put together the questions from  
10 Mr. Friedman's letter, which is Exhibit C to your  
11 report, and just my notes and then your answer. So  
12 to the extent you need to look at the questions as  
13 I ask you my questions, and you've got to flip back  
14 to Exhibit C, and then your answers would be in the  
15 beginning.

16 MR. FRIEDMAN: Tony, since I have an  
17 extra copy, I will rip off, with your  
18 permission, the letter so the witness doesn't  
19 have to flip the pages.

20 THE WITNESS: Okay, good.

21 Q. Now, the first question asked was -- let  
22 me read it into the record. Question number 1: If  
23 you were serving as an independent director of  
24 Marvel, another public company, could you describe  
25 in general terms your role and how you would carry

1 Longstreth

2 out your obligations?

3 That was the question you were asked.

4 And in your answer, at the end of the first  
5 paragraph, you say that you would owe to Marvel --  
6 you would owe Marvel the twin duties of loyalty and  
7 care generally expected of corporate directors.

8 You'd owe those duties to the  
9 shareholders as well, correct?

10 A. Yes, through the company to the  
11 shareholders.

12 Q. And question 2 talks about the fact that  
13 Marvel had an 80 percent stockholder, 20 percent of  
14 the shares held by the public and whether that  
15 would affect the way in which you would perform  
16 your obligations as a Marvel director.

17 In the course of your answer to number  
18 2, you refer, for example, midway through the  
19 second paragraph, you talk about what the  
20 independent directors could be expected to assert  
21 with undivided loyalty, the best interest of Marvel  
22 and all the stockholders -- all the shareholders.  
23 Do you see that?

24 A. Yes, I do.

25 Q. The next two paragraphs down, again,

1 Longstreth

2 you're talking about your duty of care to Marvel  
3 and loyalty to the company and all its  
4 shareholders. Do you see that?

5 A. Yes.

6 Q. And the next paragraph down, once again,  
7 you talk about assessing the best interest of  
8 Marvel and all its shareholders?

9 A. Yes.

10 Q. All its shareholders, that would include  
11 the majority shareholder as well as the minority  
12 shareholders, correct?

13 A. Correct.

14 Q. Would it be, to your understanding,  
15 consistent with your fiduciary duties owed to the  
16 majority shareholder to place or attempt to place  
17 restrictions or limitations on the majority  
18 shareholders' ability to sell, lend or hypothecate  
19 its stock, which restrictions didn't apply to any  
20 of the minority shares?

21 A. Would you repeat that question?

22 Q. Sure. To your understanding, would it  
23 be consistent with the fiduciary duties to the  
24 majority shareholder to place restrictions or  
25 limitations on its ability to sell, lend or

1 Longstreth

2 hypothecate its stock, which restrictions did not  
3 apply to the shares held by the minority?

4 A. I don't think I know the answer to that  
5 question. I don't understand how Marvel could  
6 impose restrictions on stock that had been issued  
7 to the majority shareholder.

8 I mean, are you suggesting there's some  
9 power that would enable me to do that?

10 Q. No, I'm asking whether -- if you tried  
11 to do that, you believe as an expert in corporate  
12 governance, that would be consistent with your  
13 fiduciary duties to the majority shareholder.

14 Putting aside whether you could do it,  
15 is it consistent with your fiduciary duties to the  
16 majority shareholder to try and somehow limit his  
17 rights to sell, lend or hypothecate his shares when  
18 you are not applying those limitations to all the  
19 shares?

20 A. I'd have to know all the facts.

21 Q. So it might be consistent with your  
22 fiduciary duty to try and do that?

23 A. There might be. It might be.

24 Q. Can you tell me what facts you'd like to  
25 know to make that judgment, 'cause I'd like to

1 Longstreth

2 Q. Including the majority shareholder?

3 A. Including the majority shareholder.

4 Q. Whose rights you would be attempting to  
5 limit?

6 A. You would be attempting to limit. And  
7 so you would go to him and say, Here's the deal.  
8 In my judgment, it might serve -- or I could say,  
9 in my judgment, it does serve the best interest of  
10 this company and its shareholders, all of them, for  
11 you to restrict your shares.

12 I don't know what I -- I don't know the  
13 case I'm talking about, but I'm not going to be  
14 driven to exclude the possibility of such a case.

15 Q. Sir, your answer, you said, it might  
16 be -- I can say, in my judgment, it does serve the  
17 best interest of this company and its shareholder,  
18 all of them, for you, majority shareholder, to  
19 restrict your shares.

20 I'm not asking about that. I'm asking  
21 about a situation which the majority shareholder  
22 does not agree, does not desire to restrict his  
23 shares in any way, shape or form, okay?

24 A. Right.

25 Q. Under those circumstances, do you

1 Longstreth

2 believe that it could be consistent with your  
3 fiduciary duties to all the shareholders, including  
4 the majority shareholder on a discriminatory basis,  
5 to apply restrictions to just his shares that don't  
6 apply to anybody else's shares?

7 A. I can't rule out the possibility without  
8 a lot of thought.

9 Q. Okay. Well, give it some thought and  
10 when you've thought about it enough, you tell me if  
11 you can come up with any instance in which you  
12 think that would be consistent with your fiduciary  
13 duties owed to all the shareholders, you let us  
14 know.

15 A. Okay.

16 Q. You've never seen such a situation in  
17 your many years of corporate practice, have you?

18 A. Not that I can recall.

19 Q. Going to your answer to question 2 --

20 A. 2?

21 Q. Yes, at the end of --

22 MR. FRIEDMAN: I'm sorry, I thought you  
23 were talking about question 2.

24 MR. CLARK: I was.

25 MR. FRIEDMAN: So --

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2 MR. CLARK: I'm going back to it.

3 MR. FRIEDMAN: Okay.

4 MR. CLARK: The hypothetical we were  
5 discussing --

6 MR. FRIEDMAN: Okay. I just wanted to  
7 make sure I was in the right place.

8 Q. In the second paragraph -- well,  
9 throughout this report, you acknowledge, do you  
10 not, that Mr. Perelman, through his affiliates,  
11 owned approximately 80 percent, slightly more than  
12 80 percent of the common stock of Marvel, right?

13 A. Yes.

14 Q. Do you know how Mr. Perelman got that 80  
15 percent?

16 A. No.

17 Q. Are you aware that he --

18 A. If I knew, I don't recall.

19 Q. So you're not aware that he purchased it  
20 from other shareholders for a fair price; you don't  
21 know that?

22 A. I don't know that.

23 Q. As an 80 percent stockholder, in your  
24 view as an expert on corporate governance, was he  
25 entitled to whatever benefits there are to owning a

1 Longstreth

2 controlling majority block of stock?

3 A. As a stockholder?

4 Q. Yes, as a stockholder.

5 A. I would say generally, that's true.

6 Q. He would. And the board of Marvel --

7 A. But he -- I mean, generally that's true,  
8 but he, as a board member, he has a fiduciary duty  
9 to the corporation and all of its stockholders  
10 and --

11 Q. Sure, as a majority stockholder and the  
12 controlling stockholder he's got a fiduciary duty  
13 to the corporation and the stockholders, right?

14 A. It's probably a different duty.

15 Q. Now, I want to focus on the board's  
16 fiduciary duties for a moment.

17 A. Yes.

18 Q. The board, for example, would not have  
19 been entitled under Delaware law, as you understand  
20 it -- you understand Marvel was a Delaware  
21 corporation?

22 A. Yes, I do.

23 Q. To your understanding, the board  
24 wouldn't have been entitled under Delaware law, for  
25 example, to attempt to dilute Mr. Perelman into a



1 Longstreth

2 noncontrolling minority position against his will,  
3 would they?

4 A. Well, that's what your expert witness  
5 says.

6 Q. I'm asking you for your opinion on that.

7 A. Do you want to repeat that question?

8 Q. Sure. Under Delaware law, is it your  
9 understanding that the board of directors would not  
10 have been entitled to attempt to dilute  
11 Mr. Perelman's ownership interest in Marvel into a  
12 noncontrol or a nonmajority position without his  
13 consent or against his will?

14 A. Well, I believe, based on your expert  
15 witness's report, that under Delaware law that  
16 would not be permitted if that were the sole  
17 purpose of the exercise.

18 Q. If it were just one purpose of the  
19 exercise, not the sole purpose, is it your  
20 understanding that that would be permitted? And if  
21 you don't know, you don't have the expertise to  
22 tell us, you can say that, too.

23 A. I don't know for sure. I mean, that --  
24 you're asking me a very technical legal question --

25 Q. Yes.

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2 A. -- and I'm not here to give you  
3 expertise on technical legal questions.

4 Q. So you're not aware, other than what  
5 Professor Hammermesh may have had to said in his  
6 report, you're not aware of whether or not under  
7 controlling Delaware law, the board of directors,  
8 consistent with their fiduciary duties to all  
9 shareholders including the majority, would be  
10 entitled to dilute the majority shareholder against  
11 his will out of a controlling position; you just  
12 don't know one way or the other?

13 A. Well, no. I don't know. But I do know  
14 that a fair reading of that expert report would  
15 indicate that we are talking sole purpose.

16 Q. Now, in the third paragraph of your  
17 answer to question 2, towards the end, you talked  
18 about standing up to the pressure.

19 A. The third paragraph?

20 Q. Yes.

21 A. Okay.

22 Q. Starts, Given the potential.

23 A. Yeah, I got it.

24 Q. Okay. You end by talking about standing  
25 up to the pressure that could be asserted by the

1 Longstreth

2 controlling shareholder, that's Mr. Perelman,  
3 right?

4 A. Yes.

5 Q. What is that pressure that you're  
6 referring to there?

7 A. Well, this -- Marvel had a -- has a  
8 controlling stockholder with 80 percent and public  
9 stockholders with 20 percent and the pressure for  
10 an independent director to step into that job is, I  
11 think it's fairly obvious. The tendency of most 80  
12 percent owners of a corporation would be to treat  
13 the corporation as his or hers. I mean, in other  
14 words, a corporation that would -- would tend to  
15 see the corporation's interest and his interest as  
16 identical.

17 And that's just human nature that I'm  
18 expressing a view about. But the case -- you know,  
19 the courts are filled with cases that illustrate  
20 that human trait. And so a director being asked to  
21 serve as an independent director on this board  
22 would have to be acutely aware of the potential for  
23 conflict arising between the interests of the  
24 controlling shareholder on the one hand and the  
25 interests of all the shareholders on the other

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2 hand.

3 Q. So the pressure that you're referring to  
4 in that phrase is the potential for a conflict  
5 between the majority and the minority shareholders?

6 A. Yes, or conflict between the best  
7 interests of the controlling shareholder on the one  
8 hand and the best interests of all the shareholders  
9 and particularly the minority on the other hand.

10 Q. Now, going down two paragraphs below  
11 that, In considering corporate issues --

12 A. Yes.

13 Q. -- saying, Considering corporate issues,  
14 I would be especially watchful for matters in which  
15 the controlling shareholder was directly or  
16 indirectly interested, other than through his stake  
17 in Marvel.

18 What did you mean by that, what I take  
19 to be an exclusion to your general statement, that  
20 last piece there, other than through his stake in  
21 Marvel?

22 A. Well, I mean, I'm talking about the  
23 possibility for self-dealing transactions between  
24 the controlling shareholder and the corporation  
25 that benefit the controlling shareholder in ways

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2 disproportionate to the benefits to Marvel or  
3 through Marvel, the other shareholders or to the  
4 other shareholders directly.

5 Q. By the way, going back to up to the  
6 pressure point --

7 A. Yes.

8 Q. -- one quick thing. You say, I would  
9 only accept the director position if I had thought  
10 I could succeed in standing up to the pressure that  
11 could be exerted by the controlling shareholder.

12 As a matter of fact, are you aware of  
13 any instance in which Mr. Perelman attempted to  
14 exert this pressure that you mentioned here on the  
15 board of directors of Marvel?

16 A. No. I would say, what I do know is that  
17 he ignored the board of directors. I mean, these  
18 note transactions and the covenants that were  
19 impinging on the ability of Marvel to do business  
20 weren't even brought to the board.

21 Q. But you're not --

22 A. So the --

23 Q. -- aware of a situation in which  
24 Mr. Perelman went to the board and exerted pressure  
25 on the board --

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2 A. I don't know. I don't think --

3 Q. -- contrary to whatever it is they  
4 thought they should be doing?

5 A. I don't know of anything like that. I'm  
6 saying that the record shows he didn't even get to  
7 that point.

8 Q. Going back down, okay, to -- is it fair  
9 to say that, if I can sort of reverse your sentence  
10 here about other than through the stake in Marvel,  
11 is it fair to say that you would not be especially  
12 watchful for matters in which the controlling  
13 shareholder was directly or indirectly interested  
14 through his stake in Marvel?

15 A. I didn't say that.

16 Q. No, I know you didn't. I'm trying to  
17 understand what you did say. You seem to be  
18 indicating that you would be especially watchful  
19 about something, and that you carve out from what  
20 you'd be especially watchful of something else.  
21 And that is, matters where a strong shareholder has  
22 his interest through his stake in Marvel. And I'm  
23 just really trying to understand exactly what the  
24 distinction is that you appear to be drawing here.

25 A. I'm saying it's a situation that I would

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2 be walking into in assuming duties that was fraught  
3 with danger because of the powerful controlling  
4 position of the controlling shareholder. And  
5 that's what makes it important to be especially  
6 watchful of all the transactions that might be  
7 going on which involve or could involve interests  
8 of the controlling shareholder outside of the  
9 interests of Marvel.

10 And I mean, to just take an example, I  
11 mean, Andrews, the deal that Andrews put on the  
12 table. I guess Andrews -- I believe Andrews is  
13 controlled entirely by Mr. Perelman. So, the  
14 Andrews deal is something that one would have to be  
15 watchful for, particularly what's happening to the  
16 stock -- I think the Andrews deal involved picking  
17 up the remaining outstanding stock of Toy Biz or  
18 something -- some company that Marvel held a  
19 majority interest in, but not all the shares. And  
20 so Andrews is talking about getting hold of the  
21 minority for itself.

22 I mean, it's that kind of a thing.  
23 That's all I'm saying, but you cannot reverse the  
24 sentence and say, I can be asleep for the rest --  
25 if there were not a controlling shareholder sitting

1 Longstreth

2 there.

3 Q. That answers it for me.

4 You talk about the Andrews proposal. As  
5 a matter of sort of process, if I take what you  
6 said correctly, you're indicating that there was a  
7 conflict of interest between -- potential conflict  
8 of interest between Mr. Perelman because of his  
9 ownership of Andrews on the one hand and Marvel and  
10 its other shareholders on the other with respect to  
11 that proposal; is that fair?

12 A. Well, I don't know a great deal about  
13 that proposal and all the ins and outs of it, but  
14 on its face, it seemed to me that -- in fact, maybe  
15 I get this idea from reading the Carl Icahn letter.  
16 I mean, he seemed disturbed that the minority  
17 interest that was sought to be acquired by Andrews  
18 would go to Andrews rather than to Marvel. That's  
19 all.

20 Q. Well, whatever Carl Icahn thought, he  
21 thought. I'm trying to get to your understanding.

22 Did you have some understanding, based  
23 on the work you've done in this case, that the  
24 Andrews proposal raised at least a potential for a  
25 conflict of interest between Mr. Perelman and his



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2 interest on the one hand and Marvel and the  
3 minority shareholders on the other?

4 A. Well, it had the potential of there  
5 being conflicts because on the one hand, it's a  
6 wholly-owned company.

7 Q. I don't disagree. I'm just making sure  
8 we understand each other.

9 A. That's all.

10 Q. As a matter of corporate governance and  
11 good corporate process, under those circumstances,  
12 what would you think that the independent directors  
13 of Marvel should have done?

14 How should they have -- not what  
15 decisions should they come to, but how should they  
16 have conducted themselves in considering the matter  
17 and coming to a decision?

18 A. Which matter?

19 Q. The Andrews proposal that you raised in  
20 your answers a few minutes ago.

21 A. Well, I think they proposed in that case  
22 to have a special committee of independent  
23 directors.

24 Q. And that's what they should have done,  
25 isn't it?

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2 A. Sounds right.

3 Q. Now, your answer to number 2, down six  
4 paragraphs, one starts, The issuance of the notes  
5 by the wholly-owned holding companies. Do you see  
6 that paragraph?

7 A. Yes.

8 Q. I'm not entirely positive that this is  
9 so, but at least this is the first place, about  
10 halfway through that paragraph, where I see your  
11 reference to the negative covenants in the notes.  
12 Do you see that?

13 A. Yes, I do.

14 Q. You say that, As discussed at some  
15 length below -- we'll get to below -- the security  
16 for the notes included a range of negative  
17 covenants restricting Marvel's freedom of action  
18 and correspondingly the free play of business  
19 judgment by its board, et cetera.

20 I just want to be absolutely clear.  
21 Where are these covenants?

22 Well, to your understanding, were there  
23 any covenants to which Marvel or the board of  
24 directors agreed, related to these notes that  
25 restricted the board's exercise of business

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2 judgment?

3 A. You mean were they a party to the  
4 covenants that affected them?

5 Q. A party or agreed in some other way, in  
6 any way, shape or form.

7 A. I don't think there was any contractual  
8 undertaking by Marvel to comply with those  
9 covenants.

10 Q. Right. Marvel was not, to your  
11 understanding, a party to the indentures governing  
12 the notes, right?

13 A. That's my understanding.

14 Q. And none of the independent directors of  
15 Marvel was a party to that contract, correct?

16 A. That's correct.

17 Q. And neither one --

18 A. I don't even think they knew about it.

19 Q. You did understand that there were  
20 public SEC filings in connection with all of these  
21 notes?

22 A. Yes.

23 Q. And putting aside the indentures, to  
24 your knowledge, there were no other agreements  
25 between Marvel or its independent directors on the

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2 one hand and anybody else on the other hand, by  
3 which either Marvel or the independent directors  
4 agreed to be bound by any restrictions in the  
5 indentures for the notes?

6 A. I don't know of any agreement by the  
7 independent directors to be bound by the notes.

8 Q. Or Marvel?

9 A. Or Marvel. However, I mean, that's not  
10 the whole story. The record is abundant in  
11 establishing that Marvel considered itself bound by  
12 those covenants.

13 Q. You didn't, I mean, you, as a lawyer  
14 looking at this, you came to the conclusion that  
15 Marvel was not contractually bound, right?

16 A. I said that there was no contract  
17 binding them, but I also said that the record  
18 indicates that de facto they considered themselves  
19 bound.

20 Q. I understand that's your view of the  
21 record.

22 A. Right.

23 Q. A trier of fact will determine what the  
24 record actually shows. But what I was trying to  
25 get to was, you're an expert and you're a corporate

1 Longstreth

2 lawyer with many decades of very substantial  
3 experience. You understood, based on the -- you  
4 know, I'm not saying an insubstantial amount of  
5 time, but 40 or 50 hours of time that you've spent  
6 on this matter, that Marvel, as a legal matter, as  
7 a contractual matter, was not bound in any way,  
8 shape or form, by any restrictions in the holding  
9 company indentures; is that correct?

10 A. As a matter of contract law, that's  
11 correct. But there are many other ways to be  
12 bound. And I think that this record shows that  
13 they considered themselves bound, behaved that way  
14 and indeed may have been subject to a claim of  
15 tortuous interference if they had not complied or  
16 tried not to comply with the covenants.

17 Q. In your opinion as a lawyer, was Marvel  
18 bound by the covenants in the note indentures?

19 A. Well, I'm not here to function as a  
20 lawyer.

21 Q. You're here to function as an expert.  
22 If you want to tell us that you're not an expert as  
23 a lawyer, you can tell us that and the judge will  
24 take that into account.

25 So I'd like an answer to my question.

1 Longstreth

2 A. Okay. Do you want to repeat the  
3 question?

4 MR. CLARK: Sure. Just go ahead and  
5 read that back, will you, Penny?

6 (The question was read.)

7 A. If I were counsel to Marvel, given this  
8 record, given the SEC filings, I would advise  
9 Marvel that they were bound.

10 Q. Okay. That's your advice as counsel to  
11 Marvel. Now I would like your opinion as a lawyer,  
12 sitting here under oath today, was Marvel bound by  
13 the covenants in the indentures for the notes?

14 A. As a -- as a strict legal matter, they  
15 were not bound.

16 MR. CLARK: Okay. Let's mark as  
17 Longstreth Exhibit 2 a three-page document  
18 which I will represent is an excerpt, a cover  
19 page and an excerpt from the form S-3 filed by  
20 Marvel Entertainment Group, Inc. with the SEC  
21 on March 14, 1995.

22 (Longstreth Exhibit 2, Cover page and  
23 excerpt from the form S-3 filed with the SEC  
24 by Marvel Entertainment Group, Inc. on March  
25 14, 1995, marked for identification, as of

1 Longstreth

2 this date.)

3 Q. You have seen this document before,  
4 haven't you, Mr. Longstreth?

5 A. Yes, I think so.

6 Q. This was one of the documents you  
7 reviewed. I think it's the fourth one on your  
8 Exhibit B list?

9 A. This is the shelf registration.

10 Q. Yeah, I think -- I think that's correct.

11 A. 1995?

12 Q. Yeah, March 14, 1995. You can confirm  
13 from looking at Exhibit B to Longstreth Exhibit  
14 1 --

15 A. Okay.

16 Q. -- which is the list of the documents  
17 you considered to see whether this is, in fact, an  
18 excerpt, as you understand it --

19 A. Yeah.

20 Q. -- of one of the documents you reviewed?

21 A. Okay.

22 Q. It is?

23 A. Yes.

24 Q. Did you consider in your work in this  
25 matter, did you consider whether the terms of the

1 Longstreth

2 negative covenants that you're talking about in  
3 your answer to number 2 -- those are the negative  
4 covenants in the holding company indentures --

5 A. Right.

6 Q. -- whether those negative covenants were  
7 more, less or as restrictive as the terms of  
8 Marvel's own debt facilities?

9 A. I did.

10 Q. And what determination did you make on  
11 that?

12 A. I determined that they were roughly the  
13 same. There are differences and I can't recall  
14 exactly what the differences were.

15 Q. So if the negative covenants in the  
16 holding company indentures were, as you say,  
17 roughly the same as those in Marvel's own debt  
18 facilities, do you have any reason to conclude that  
19 even if the note indentures hadn't existed or  
20 didn't contain these negative covenants, the free  
21 play of business judgment by Marvel's board would  
22 have been materially less restricted?

23 A. Yes.

24 Q. And go ahead. Explain.

25 A. I have a strong reason to believe that.



1 Longstreth

2 Q. You think that -- okay. Go ahead.

3 Explain it.

4 A. Well, the difference is that in the case  
5 of the term bank debt.

6 Q. Marvel's term bank debt?

7 A. Marvel's term bank debt -- and let's  
8 give this discussion -- assume they're exactly the  
9 same covenants, to make it simple. In that case,  
10 the directors of Marvel are free to refinance the  
11 bank term. In that case, the directors are free to  
12 refinance the bank term debt.

13 Q. And I assume you mean refinance with new  
14 debt that doesn't have those sort of covenants,  
15 right?

16 A. That's what I mean, yes. With new debt,  
17 with stock, preferred stock or common stock and  
18 therefore the -- the control of the business  
19 remains in the hands of the directors of Marvel.  
20 And it can -- that board can decide how to  
21 handle the term debt and how to handle, therefore,  
22 the covenants.

23 Q. Okay.

24 A. In the other case, let me finish this  
25 answer -- in the other case, the covenants are in

1 Longstreth

2 the indentures, three indentures, that were  
3 supporting the notes issued by Perelman's holding  
4 companies. And the affect of those covenants under  
5 those circumstances, was to lift out of the hands  
6 of the board of Marvel a range of business  
7 judgments that could have been freely exercised by  
8 that board and hand that power over to the  
9 indenture trustee, the noteholders and Perelman as  
10 an individual, not as a fiduciary, in some  
11 combination or separately.

12 And neither the indenture holder nor the  
13 noteholders had any fiduciary duty whatsoever to  
14 Marvel or its stockholders. And yet they held this  
15 extraordinary power to limit the business judgment  
16 of that board, and -- and that's a crucial  
17 difference. I tried to say that in my report, and  
18 that's it.

19 Q. And they held this power pursuant to the  
20 terms then set forth in the --

21 A. Indentures.

22 Q. -- note indentures?

23 A. Right.

24 Q. These are the note indentures that  
25 you've testified were not as technical legal matter

1 Longstreth

2 binding on Marvel and the Marvel board of  
3 directors, correct?

4 A. I said, as a technical legal matter of  
5 contract law, Marvel wasn't legally bound. I also  
6 tried to say that by Marvel's own behavior, it  
7 became de facto bound.

8 Q. Now, going back to your hypothetical.  
9 Instead of assuming that the board of directors of  
10 Marvel go out and refinance its debt, okay, let's  
11 just assume they don't do that. That Marvel's  
12 debt, with the same or roughly the same covenants  
13 as were found in the holding company note  
14 indentures, that that debt facility continued to  
15 exist, okay?

16 As long as that debt facility was in  
17 place, Marvel's board of directors free play of  
18 business judgment would have been limited to the  
19 same extent, as you're saying, as a practical  
20 matter, it was under the note indentures; isn't  
21 that fair?

22 A. No, it isn't fair.

23 Q. How is it different?

24 A. Because at any moment in time that board  
25 could wipe away those covenants.

1 Longstreth

2 Q. I'm sorry, I thought I asked you to  
3 assume that that didn't happen. So if I didn't, I  
4 will. Assume that that debt is not refinanced,  
5 it's not wiped away, as you say --

6 A. No, but it's the potential to wipe it  
7 away at any moment. Today, I don't want to wipe it  
8 away. Tomorrow, I do.

9 Q. I don't want to argue with you. Assume  
10 that they don't have that potential, that they  
11 can't refinance.

12 A. Oh, that they can't do it?

13 Q. Sure. Assume that. Okay. Now, under  
14 that set of facts, the board's free play of  
15 business judgment would be just as limited as you  
16 believe it was as a practical matter under these,  
17 the terms of the holding company note indentures?

18 A. You'd have to tell me a lot more. I  
19 mean, why can't -- why aren't they free?

20 Q. It doesn't matter.

21 A. It does matter.

22 Q. No, it's my assumption. It's my  
23 hypothetical. If you don't know the answer, you  
24 just say, I can't answer that question, Mr. Clark,  
25 and I'll go on. I'll move on.

1 Longstreth

2 A. I can't -- I can't answer it.

3 Q. Because I'm going to ask it again at  
4 trial and you won't be able to answer it there  
5 either.

6 So you don't think --

7 A. Maybe the judge will allow me to  
8 question you enough so that I can understand the  
9 question thoroughly.

10 Q. You tell me what you need to know.

11 A. I just did.

12 Q. What?

13 A. I need to know why I can't repay the  
14 debt.

15 Q. Because the debt says you can't without  
16 an extraordinary penalty, okay?

17 A. But it doesn't. You're making up a debt  
18 that doesn't exist.

19 Q. I'm making a hypothetical, which is what  
20 you do with experts. You ask them hypothetical  
21 questions that get you answers.

22 A. But let's deal with the debt we're  
23 talking about, not the debt you're inventing.

24 Q. Okay. Let's deal with the debt that  
25 we're talking about. It was in place, right?

1 Longstreth

2 A. Yeah.

3 Q. Same time as these notes were in place,  
4 right?

5 A. Right.

6 Q. Had the same or roughly the same  
7 limitations on Marvel's freedom of action, correct?

8 A. Roughly.

9 Q. So, Marvel's own debt instruments  
10 limited its board's freedom of action?

11 A. Until the board decided not to be  
12 limited.

13 Q. Well, let's deal with the facts. Did  
14 the board decide not to be so limited?

15 A. It could have at any minute.

16 Q. Did it, to your understanding? The  
17 answer is no, isn't it? You understand the  
18 debt that I'm talking about --

19 MR. FRIEDMAN: Please don't interrupt  
20 the witness.

21 MR. CLARK: I'm not.

22 MR. FRIEDMAN: He was starting to give  
23 an answer -- he was -- you asked a question,  
24 he started to give an answer and you jumped  
25 in.

1 Longstreth

2 MR. CLARK: Okay. Now that you've had  
3 your say, Mr. Friedman.

4 Q. I'm going to ask you the question.

5 A. Right.

6 Q. You understand as a matter of fact that  
7 during the entire period of time, from 1993 through  
8 the end of 1996 that we're dealing with here, that  
9 Marvel had in place debt facilities that had  
10 covenants that restricted the freedom of the  
11 board's action every bit as much as you say they  
12 were restricted as a practical matter by the  
13 covenants found in these note indentures; isn't  
14 that the fact?

15 A. Yes. I mean, in fact, the debt rose  
16 from 250 million to 600 and something million --  
17 650 million, but it's important to get at the  
18 reason for that. The reason is, they couldn't  
19 finance any other way.

20 Q. Then going on in your answer to question  
21 2. Do you see the paragraph -- it's the next  
22 paragraph. It starts, As Marvel began to acquire  
23 liquidity problems. Do you see that?

24 A. Yes. Where am I?

25 Q. It's --

1 Longstreth

2 A. Oh, As Marvel began to encounter?

3 Q. Yes.

4 A. Okay.

5 Q. You say, these negative covenants,  
6 referring to the covenants in the holding company  
7 indentures, not in Marvel's own --

8 A. Right.

9 Q. -- debt facilities, correct?

10 A. Right.

11 Q. These negative covenants impaired its  
12 ability to raise much needed capital, leading in  
13 the end to a bankruptcy file, right?

14 A. Yes.

15 Q. Did Marvel's own covenants impair its  
16 ability to raise much needed capital?

17 A. No.

18 Q. Why not?

19 A. Because they could have issued preferred  
20 or debt or common stock and paid off the bank  
21 loans.

22 Q. And they were legally entitled to do  
23 that, to your understanding?

24 A. Not under the indenture to the third --

25 Q. We're getting back to that indenture.



1 Longstreth

2 Okay.

3 You agree that as a technical legal  
4 matter, Marvel wasn't bound by those indentures,  
5 right? You have already said that.

6 A. Well, let's not repeat that.

7 Q. Okay.

8 A. Whatever I said, I said.

9 Q. Given that you said that --

10 A. I also said, de facto, the company  
11 accepted those restrictions as their own and  
12 behaved that way and made filings with the SEC that  
13 would support that conclusion.

14 And so, indeed, the minutes that I'm  
15 referring to here make it perfectly clear that  
16 Mr. Perelman thinks that's the case because he's  
17 talking about the inability to get the negative  
18 covenants in the indenture that supports his note  
19 issuance waived.

20 Q. Okay. Now --

21 A. And he can't get them waived because he  
22 can't find the noteholders. That's what he says.

23 Q. Let's go back to my question. It's your  
24 testimony that the negative covenants in Marvel's  
25 own debt facilities did not impair its ability to

1 Longstreth

2 raise much needed capital; is that correct?

3 A. The negative covenants in the Marvel's  
4 term bank debt. That's what I'm saying.

5 Q. Did not impair its ability to raise  
6 capital?

7 A. Yes.

8 Q. And by contrast, you are also saying  
9 that the negative covenants in an indenture, which  
10 as a technical legal matter, did not bind Marvel,  
11 did impair its ability to raise much needed  
12 capital; is that correct?

13 A. That's correct.

14 Q. And that this state of affairs led in  
15 the end to a bankruptcy filing, correct?

16 A. Yes.

17 Q. Explain how that happened. Explain how  
18 what you just said led to this bankruptcy filing.

19 A. Well, as the minutes -- as the minutes  
20 of this -- there are minutes of two meetings.

21 Maybe I ought to examine those minutes so I can  
22 show you exactly what I'm trying to say.

23 Q. Well, you've got your report here. Just  
24 explain to me what you say in here, because I don't  
25 see the cause and effect on the face of your report

1 Longstreth  
2 between these negative covenants and the  
3 indentures -- I don't see the cause and effect  
4 between the negative covenants in the holding  
5 company note indentures and the end result of a  
6 bankruptcy filing. So I would like you to connect  
7 the dots.

8 MR. FRIEDMAN: Do you want to show the  
9 witness the board minutes he requested?

10 MR. CLARK: I don't. I don't at this  
11 point, no.

12 A. Well, there -- let's see. I think the  
13 minutes that I examined of the Marvel board  
14 meetings of December 12th and December 26th lead  
15 me, and I think any reasonable reader, to the  
16 conclusion, one, that the indenture negative  
17 covenants were an obstacle to Marvel's ability to  
18 find a solution to its liquidity problem. There is  
19 no mention, on the other hand, of the bank term  
20 loan covenants being an obstacle.

21 Second, a fair reading of those minutes  
22 makes it clear that although a waiver of the note  
23 indentures covenants is necessary, it can't be  
24 obtained short of bankruptcy because I think, as  
25 Mr. Perelman says, that the notes had been

1 Longstreth

2 purchased by some distress event hedge funds, and  
3 they simply were not in the form of a group that  
4 could be met and negotiated with.

5 And third, there is discussion in both  
6 sets of minutes about the need to file in Chapter  
7 11 so that you can bypass these precise negative  
8 covenants that are the problem.

9 So when I say it led to -- when I say  
10 the covenants led to a bankruptcy filing, I think  
11 I'm simply following the logic which is impeccable  
12 of Mr. Perelman as written up in his own minutes.

13 Q. So the waiver of the note covenants that  
14 you mentioned in your last answer, that was a  
15 condition of what, of financing, new financing for  
16 Marvel? Is that what it was?

17 A. Unless you got the waiver, you couldn't  
18 solve the liquidity problem by finding more  
19 capital, either through additional borrowing or a  
20 refinancing or an equity placement. Yeah.

21 Any -- the negative covenants stood in  
22 the way of, as I understand it, a range of possible  
23 ways to solve a problem that threatened the  
24 viability of Marvel.

25 Q. But what was the source of the

1 Longstreth

2 financing?

3 A. Well, among other things, there was the  
4 Andrews offer and then there's also something from  
5 Icahn, which I didn't fully understand. But there  
6 may have been other approaches. I don't know. The  
7 minutes don't make that clear. But what they do  
8 make clear is that the negative covenants were a  
9 complete obstacle to doing anything, and that's why  
10 the minutes suggest that the only solution to this  
11 is to file for a chapter.

12 Q. Were you aware of whether this Icahn  
13 proposal that you referred to had as a condition  
14 anything to do with a waiver of the covenants of  
15 the notes?

16 A. I'm not aware of that. I don't know.

17 MR. CLARK: Let's go off the record for  
18 a minute while we change the tape.

19 THE VIDEOGRAPHER: The time is 12:09  
20 p.m., April 13, 2006. This completes Tape  
21 Number 1 of the videotaped deposition of  
22 Mr. Bevis Longstreth.

23 (Longstreth Exhibit 3, Document on High  
24 River Limited Partnership letterhead, dated  
25 December 10, 1996, marked for identification,

1 Longstreth

2 as of this date.)

3 (Longstreth Exhibit 4, Document on High  
4 River Limited Partnership letterhead, dated  
5 December 19, 1996, marked for identification,  
6 as of this date.)

7 (Discussion off the record.)

8 THE VIDEOGRAPHER: The time now is 12:12  
9 p.m., April 13, 2006. This marks the  
10 beginning of Tape Number 2 of the videotaped  
11 deposition of Mr. Bevis Longstreth.

12 MR. CLARK: Now, while we were off the  
13 record, I asked the court reporter to mark as  
14 Longstreth Exhibit 3 a document that appears  
15 to be dated December 10, 1996, on the  
16 letterhead of High River Limited Partnership  
17 and I asked to have marked as Longstreth  
18 Exhibit 4, a December 19, 1996 letter on the  
19 same type of letterhead.

20 Q. Have you seen those documents before?

21 A. Yes, I have.

22 Q. You reviewed those in connection with  
23 your report?

24 A. I did.

25 Q. Take as much or as little time as you

1 Longstreth

2 need to read these. My question to you is whether  
3 anywhere in these documents there's an indication  
4 that whatever proposal Mr. Icahn and High River  
5 Limited Partnership was making to Marvel to provide  
6 the financing it talks about, whether there was any  
7 condition that you can find related to a waiver of  
8 the covenants in the holding company notes.

9 A. Well, what these letters say is that  
10 they want permission to conduct due diligence,  
11 through which they would discover these covenants,  
12 I trust, and realize that they have to do something  
13 about it.

14 Q. Well, let's take that.

15 A. So, I see -- there's not a statement in  
16 here about the negative covenants. That's true,  
17 but --

18 Q. On its face --

19 MR. FRIEDMAN: Please, the witness  
20 was --

21 A. I don't see why there would need to be  
22 any reference to it at all at this preliminary  
23 stage.

24 Q. There is no stated condition to the  
25 proposal as articulated in these two letters that

1 Longstreth

2 involves any waiver of any covenants in any of the  
3 indenture notes?

4 A. No, but you're an experienced lawyer, as  
5 am I, and you know that in this kind of a letter,  
6 you wouldn't dream of putting in such a thing.  
7 What you say is, I'm going to do due diligence.  
8 Due diligence is designed to turn up all the  
9 problems. You don't put the problems in an  
10 offering letter. You put the opportunities in the  
11 offering letter and say, I'm subject to due  
12 diligence, we're prepared to move forward.

13 Q. So you think that Mr. Icahn was going to  
14 perform due diligence, and in that diligence, you  
15 think he was going to discover the existence of the  
16 note indentures and the negative covenants?

17 MR. FRIEDMAN: I object to the form of  
18 the question.

19 MR. CLARK: It's just a question.

20 Q. Is that your testimony?

21 A. I think due diligence and the way these  
22 things are done, the subject to confirmatory due  
23 diligence, that is a phrase that embraces any and  
24 all possibilities that we discover that could put a  
25 crimp in our deal, and we'll have to address those



1 Longstreth

2 after we discover them. It's a hold, that's all.

3 Q. Let me approach it differently.

4 Is it your belief, based on everything  
5 that you've read and all the work you've done in  
6 connection with this matter, that as of December  
7 10th and December 19, 1996, Mr. Icahn and High  
8 River Limited Partnership were or likely were  
9 unaware of the existence of the negative covenants  
10 in the note indentures?

11 A. I have no idea.

12 Q. Were they holders of the notes that were  
13 covered by those indentures at that time?

14 A. I think they were.

15 Q. And as a matter of prudent management of  
16 one's own financial affairs, would you expect that  
17 Mr. Icahn would have familiarized himself, or his  
18 advisors would have, with the terms that govern the  
19 notes that he had purchased?

20 A. Not necessarily. The --

21 Q. Okay.

22 A. Not necessarily.

23 Q. But in reading these two documents,  
24 Exhibit 4 -- Exhibits 3 and 4, no indication that  
25 there's any condition on the Icahn proposal related

1 Longstreth

2 to a waiver of the note covenants, correct?

3 A. I didn't say that. I said it's subject  
4 to confirmatory due diligence which covers the  
5 water front.

6 Q. Yeah, now answer my question.

7 MR. CLARK: Would you read it back,  
8 please?

9 MR. FRIEDMAN: Objection. Objection to  
10 your question, it's been asked and answered.

11 MR. CLARK: I'm going to ask it as many  
12 times as it takes to get the straight answer,  
13 which is no.

14 Q. Is there anything in either of these two  
15 letters, Exhibits 3 and 4, that on the face of  
16 these letters indicates that there is a condition  
17 to Mr. Icahn's proposal based on a waiver of the  
18 note covenants?

19 A. No.

20 Q. It didn't take that many tries.

21 Going back to your answer to Exhibit 2,  
22 the next paragraph, that's the one we were just  
23 looking at.

24 A. Yeah.

25 Q. It starts, These minutes capture with

1 Longstreth

2 dramatic affect?

3 A. Yes.

4 Q. At the end of this paragraph, you say,  
5 It is highly likely that there were many other  
6 instances of impairment of the more than three-year  
7 period between the issuance of the first tranche of  
8 notes in the Chapter 11 filing. Do you see that?

9 A. Yes.

10 Q. Please identify for us each and every  
11 such instance of impairment that you're referring  
12 to here.

13 A. I don't have any specific impairments.  
14 I'm -- I'm simply estimating or judging that it is  
15 likely they occurred. This is an -- Marvel was an  
16 acquirer, a company, as I understand it, that  
17 liked to acquire other companies, and you have a  
18 choice of acquiring them for debt or equity or some  
19 combination.

20 And so, in that respect alone, it is --  
21 I'm saying, it's likely there were other occasions  
22 where the range of possible ways to finance an  
23 acquisition was constrained.

24 Q. You know of no single instance in which  
25 that was the case, correct?

1 Longstreth

2 A. Not definitively. That's right.

3 Q. Other than definitively, do you know of  
4 any other -- any instance in which there was this  
5 impairment?

6 A. There was a company that was acquired  
7 for debt, for term bank debt. What's the name of  
8 that?

9 Q. Skybox?

10 A. Skybox.

11 Q. Okay.

12 A. And that's an example. I mean, it is --  
13 it is -- it is strange for a \$3 billion company to  
14 use bank debt, which grew from 250 to 650 over this  
15 period. It seems to me it's strange anyway to use  
16 that kind of bank debt, term bank debt, which is  
17 pretty short-term compared to long-term notes or  
18 compared to equity to acquire a company.

19 Q. You --

20 MR. FRIEDMAN: He's still answering.

21 Q. I'm sorry, he's still answering. Go  
22 right ahead.

23 A. No, I'm through.

24 Q. I thought so. You're no expert on  
25 financing of acquisitions by entertainment --

1 Longstreth

2 A. No.

3 Q. Comic book, sticker and --

4 A. I said I was not. I'm informed in part  
5 by the expert opinion of Mr. Carron is it? I  
6 think.

7 Q. Your report, you said earlier, your  
8 opinions and conclusions are not based on any other  
9 expert's opinion, right?

10 A. Before, that's right.

11 Q. Now, the next couple of paragraphs --

12 A. So, in -- in that respect, I was  
13 conflating two things, but all I say in this  
14 expert's report is that, in my judgment, it was  
15 likely that there were other instances, many other  
16 instances. And I have no proof of that, I'm just  
17 rendering a judgment.

18 Q. And you have no professional expertise  
19 in that area as well?

20 MR. FRIEDMAN: I object to the form of  
21 the question, what --

22 Q. I'm asking you that question; is that  
23 true?

24 MR. FRIEDMAN: What is the area?

25 Q. Of financing, of acquisitions by

1 Longstreth

2 entertainment, comic book, sticker or trading card  
3 businesses, you have no expertise in that area,  
4 right?

5 A. In that limited area.

6 Q. Now, the next several paragraphs, you  
7 talk about the Skybox acquisition.

8 A. Right.

9 Q. And if I get the gist of this right,  
10 you're saying that -- well, let's take it in  
11 pieces.

12 Under the Marvel III notes -- do you  
13 recall what the face amount of the Marvel III notes  
14 was?

15 A. No.

16 Q. 125 million, does that sound about  
17 right?

18 A. I don't remember.

19 Q. It was. The Marvel III notes, as you  
20 indicate here, were cash. They had to pay interest  
21 semi-annually, right?

22 A. That's right.

23 Q. And the offering memorandum indicated  
24 that a principal source of cash to make those  
25 payments would be payments being made by Marvel

1 Longstreth

2 presumably to, directly or indirectly to Marvel III  
3 under a tax-sharing arrangement, correct?

4 A. Yes.

5 Q. And you point out that were Mr. Perelman  
6 and his affiliates' ownership of Marvel common  
7 stock to drop below 80 percent, then if I  
8 understand what you are saying here, that  
9 tax-sharing arrangement would no longer be viable  
10 or available --

11 A. Yes.

12 Q. -- as a source of cash to make those  
13 interest payments, correct?

14 A. Yes.

15 Q. So, what you're indicating or suggesting  
16 is that for these reasons, Mr. Perelman would not  
17 want that tax-sharing arrangement, that tax-sharing  
18 arrangement to be terminated, to be threatened by a  
19 dilution?

20 A. Yes. Well, the holding companies, if I  
21 understand it correctly, had -- their sole asset  
22 was the stock of Marvel, so they would have no  
23 means of meeting the interest payments.

24 Q. Now, did you -- I didn't see it on your  
25 list, but did you ever -- did you know there was a

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2 tax-sharing agreement that governed this  
3 arrangement?

4 A. I think I assumed there was. I don't  
5 think I saw it.

6 Q. Right, you've never reviewed it. Do you  
7 know, under that arrangement, how long Marvel made  
8 these tax-sharing payments up to Marvel III?

9 A. How long it had done so?

10 Q. Yeah, how long did it make payments?

11 A. I don't know. I didn't look at that.

12 Q. Are you aware that starting in 1995,  
13 Marvel actually received payments under the  
14 tax-sharing arrangement and didn't make them. It  
15 got money, it didn't pay money; were you aware of  
16 that?

17 A. No. How do you mean? Would you explain  
18 that a little further?

19 Q. Sure. It's the fact that with respect  
20 to 1995, Marvel was paid approximately \$15 million  
21 cash under this tax-sharing arrangement. And with  
22 respect to 1996, Marvel was actually paid somewhere  
23 in the range of 10-and-a-half-million dollars under  
24 this tax-sharing arrangement.

25 To the extent that Marvel was receiving



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2 those payments for 1995 and 1996, you'd agree with  
3 me, would you not, that that was a benefit to  
4 Marvel?

5 A. Yeah, on its face. On the basis of just  
6 what you've told me, it would appear to be a  
7 benefit.

8 Q. Now, the other thing, sir, you point to  
9 the loss of this source of income under the  
10 tax-sharing arrangement as one reason that  
11 Mr. Perelman would have an interest in preventing  
12 Marvel from issuing stock that would dilute his  
13 holdings to less than 80 percent, right?

14 A. Yes.

15 Q. And then you offer a second reason why  
16 he would be so incentivized, and that was the fact  
17 that -- a deconsolidation of that, going below 80  
18 percent would trigger a right on the part of the  
19 holders of the Marvel III notes to require that  
20 their bonds be repurchased at 101 percent of face  
21 value, correct?

22 A. Yes.

23 Q. Now, Marvel III was obligated under the  
24 terms of the notes at some time to pay off the  
25 purchase -- face amount, the \$125 million, right?

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2 A. Yes.

3 Q. So this provision involved a, what I  
4 call a one percent penalty, in effect, on Marvel  
5 III or for an early repurchase, correct?

6 A. Well, it's more than that. It's one  
7 percent cost plus the loss of the term of the  
8 notes.

9 Q. Right. The face -- one percent in  
10 addition to the obligation to pay back the \$125  
11 million face amount of the notes?

12 A. Over time?

13 Q. Right.

14 A. Yeah. I mean, it's essentially a put  
15 or --

16 Q. Right.

17 A. And I'd call it essentially equivalent  
18 to a default.

19 Q. Now, if the face amount --

20 A. Acceleration.

21 Q. You through?

22 If the face amount of the notes was \$125  
23 million, then the one percent penalty is  
24 \$1,250,000, right?

25 Correct? You've got to articulate it.

1

2 A. Yes.

3 Q. Do you have any -- based on all the work  
4 you've done, do you have any understanding or  
5 knowledge of whether \$1,250,000 was a material sum  
6 to Mr. Perelman in 1996?

7 A. I don't know, but I think it's important  
8 to understand that an acceleration is what's  
9 painful here.

10 Q. Going on to the next -- actually, let's  
11 go off the record.

12 MR. CLARK: The time is 12:30 p.m. and  
13 we are going off the record.

14 (Discussion off the record.)

15 (Lunch recess.)

16 (Time noted: 12:30 p.m.)

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A F T E R N O O N       S E S S I O N

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(Time noted: 1:02 p.m.)

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B E V I S    L O N G S T R E T H, resumed and

5

testified as follows:

6

EXAMINATION (Cont'd.)

7

BY MR. CLARK

8

THE VIDEOGRAPHER: The time is 1:02 p.m.

9

and we're back on the record.

10

(Discussion off the record.)

11

THE VIDEOGRAPHER: 1:02, we're going off

12

the record.

13

(Longstreth Exhibit 5, Answer to

14

Question 2 of Mr. Longstreth's report, marked

15

for identification, as of this date.)

16

THE VIDEOGRAPHER: The time is 1:05 p.m.

17

and we're back on the record.

18

Q. Mr. Longstreth, before we broke for

19

lunch, we were talking about Skybox acquisition in

20

1995. Do you recall?

21

A. Yes.

22

Q. Going to the second last paragraph of

23

your answer to question 2 in your report, you talk

24

about, in the latter part of that paragraph, you

25

say, Although the issuance of Marvel common stock

1

2 would certainly have been one way of raising \$150  
3 million -- that's the price of Skybox, right;  
4 that's what you're talking about there?

5 A. Yes.

6 Q. It is obvious that given the dire  
7 consequences to Marvel III and so doing, Perelman  
8 and his colleagues would have had a strong interest  
9 in avoiding any exploration of a stock offering,  
10 even if it was clearly the best alternative for  
11 Marvel and all of its shareholders.

12 That last phrase, all of it's  
13 shareholders, you include Mr. Perelman in there,  
14 right?

15 A. I do.

16 Q. The dire consequences that you refer to  
17 in this sentence, those are the same things we were  
18 talking about just before lunch, right? Number 1:  
19 The loss of Marvel's theoretical obligation to make  
20 tax-sharing payments to the holding companies,  
21 right?

22 A. Yes.

23 Q. And then, The acceleration of one  
24 percent premium payment to the Marvel III  
25 noteholders, right?